



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 5500-99

12 October 2000

MR [REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested that your fitness report for 19 August 1997 to 28 February 1998 be modified by removing the references to nonjudicial punishment; that your reenlistment code be changed from RE-4 (not recommended for reenlistment) to RE-1B (sergeant recommended and eligible for reenlistment, assigned due to service limitation for grade); and that you be awarded full, rather than half separation pay.

It is noted that the Commandant of the Marine Corps (CMC) has modified the fitness report as requested and changed your reenlistment code to RE-3C (directed by CMC).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) dated 24 August 1999 with enclosure, and the advisory opinions from the HQMC Performance Evaluation Review Branch, Personnel Management Division (MMER), dated 24 August 1999, and the HQMC Enlisted Assignment Branch (MMEA-6), dated 3 February 2000, copies of which are attached. They also considered your counsel's rebuttal letter dated 19 November 1999 with enclosures, and the executive officer, Headquarters and Service Company, Headquarters Battalion, HQMC letter dated 27 September 2000 with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or

injustice. Regarding your requests for the RE-1B code and full separation pay, the Board found relief was not warranted, as your corrected record still reflects an adverse fitness report for 1 March to 11 August 1995 and adverse service record page 11 entries dated 28 July 1995 and 17 December 1998, all during your last enlistment contract which began on 18 April 1994. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to:
Larry N. Burch, Esq.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

5500-47
IN REPLY REFER TO:
1600
MMER
24 Aug 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FORMER MARINE SERGEANT
[REDACTED]

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 18 Aug 99
(2) CMC Advisory Opinion 1040 MMER/RE of 24 Aug 99

1. As evidenced by enclosure (1), PERB modified [REDACTED]
fitness report for the period 970819 to 980228 (AN) by
eliminating any reference to nonjudicial punishment (NJP).
By that action, the fitness report was also corrected to show
that it is not adverse.

2. We defer to BCNR [REDACTED]'s request for a change to his
reenlistment code (Re-Code) and the awarding of separation pay.
Enclosure (2) is furnished to assist in adjudicating the RE-Code
issue.

[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the
Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

5500-47
IN REPLY REFER TO:
1610
MMER/PERB
AUG 18 1999

Mr. [REDACTED]
3 [REDACTED]
[REDACTED]

Dear [REDACTED]

Per the provisions of Marine Corps Order 1610.11C, the Performance Evaluation Review Board (PERB) has reviewed allegations of error and injustice in your Naval record.

Having reviewed all the facts, the Board has directed that your fitness report for the period 970819 to 980228 (AN) will be corrected as indicated below:

- Item 17c. Change mark to "no"
- Item 24. Elimination of your signature/date
- Section C. Elimination of the following verbiage:
"Disciplinary action: Battalion level NJP for indecent language resulting in verbal reprimand. Considered to be an anomaly, no further problems." NOTE: Although you only asked for removal of the first sentence (i.e., ending with the words ". . . verbal reprimand."), the Board found that excising further comments was necessary to purify the report. A copy of the corrected report is enclosed.

Since the remainder of your requests do not fall under the purview of this Headquarters, your case is being forwarded to the Board for Correction of Naval Records (BCNR) for final resolution. Further inquiries should be directed to that agency at 703-614-9851.

Sincerely,

[REDACTED SIGNATURE]

Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps

Encl: Copy of Fitness Report

Copy to:

D [REDACTED]

Burch & Burch-Rates, LLC
7307 Hanover Pkwy, Ste A
Greenbelt, MD 20770



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

350099
IN REPLY REFER TO:
1040
MMER/RE
24 APR 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]
[REDACTED]

1. [REDACTED] service record has been reviewed and it has been determined that he should have been assigned a reenlistment code of RE-3C, which indicates that he was not recommended for reenlistment and the disqualifying factor is not covered by another code. A review of [REDACTED] service record indicates that he was honorably discharged on December 17, 1998 by reason of Involuntary Discharge - Non-Retention on Active Duty. The decision to assign [REDACTED] RE-3C is based on regulations governing reenlistment code assignment and an evaluation of his entire service record. We note, despite the setting aside of a nonjudicial punishment and the amendment of the corresponding fitness report, there is still a page 11 counseling entry concerning lack of judgment by using offensive language toward a civilian coworker.

2. The appropriate correction to [REDACTED] DD Form 214 is being made and will be forwarded to him under separate correspondence. If after thirty days [REDACTED] has not received a DD Form 215 correcting his reenlistment code as stated above, he should contact the Commandant of the Marine Corps (MMSB-10) to determine the status of the correction.

[REDACTED]
D. J. [REDACTED] EN
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1001/1
MMEA-6
03 FEB 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR DOCKET NO. 05500-99 CASE OF FORMER SERGEANT

1. We have reviewed and recommend that you deny Sergeant [REDACTED] request for separation pay at the full rate.
2. On 23 September 1998, Sergeant [REDACTED] requested reenlistment. On 16 October 1998, Sergeant [REDACTED] request for reenlistment was denied. The denial of further service was based on Sergeant [REDACTED] commanding officer non recommendation for reenlistment due to substandard conduct and failure to uphold the standards expected of a noncommissioned officer of his experience, grade, age and maturity.
3. Sergeant [REDACTED]'s official military personnel file and service record book (SRB) were considered in this evaluation. The removal of his nonjudicial punishment and coinciding fitness report did not significantly change his record of performance and conduct as reflected by the two SRB entries for substandard performance, conduct and judgment. Therefore, no further service is still warranted.
4. Sergeant [REDACTED] is authorized involuntary separation pay at the half rate. Per Marine Corps Order P1900.16E, Marine Corps Separation and Retirement Manual, and SECNAVINST 1900.7G, Separation Pay for Involuntary Separation from Active Duty, a Marine must be fully qualified for reenlistment in order to receive full separation pay. In Sergeant [REDACTED] case, he did not qualify for reenlistment, due to substandard performance, conduct and judgement on current contract which resulted in a non recommendation by his commanding officer. Therefore, Sergeant [REDACTED] is only entitled to separation pay at the one half rate.
5. Even with a NJP set aside and a fitness report removed, Sergeant [REDACTED] performance, conduct and judgment was still substandard. Therefore, his request for reenlistment was correctly denied. The non recommendation was accurate, and thus Sergeant [REDACTED] is not qualified for reenlistment. Since he was not qualified for reenlistment, he received the correct amount of separation pay per the SECNAVINST.
6. Point of contact is Captain [REDACTED] DSN 270-0000